Calendar No. 578

97TH CONGRESS, 2d Session } SENATE { REPORT No. 97-408

MARITIME AUTHORIZATIONS ACT OF 1983

MAY 20 (legislative day, MAY 11), 1982.—Ordered to be printed

Mr. PACKWOOD, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2336]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2336) to authorize appropriations for fiscal year 1983 for certain maritime programs of the Department of Transportation, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute ably thereon and recommends that the bill do pass.

PURPOSE OF THE BILL

The bill, as reported, would authorize $541,823,000 for maritime programs administered by the Maritime Administration in accordance with section 209 of the Merchant Marine Act, 1936. In the absence of subsidies to support construction in U.S. shipyards, it grants temporary authority to U.S. operators to construct, reconstruct, or acquire their vessels outside the United States. It also limits the growth in ship construction loan guarantee commitments and makes technical amendments to improve the Secretary's ability to manage the vessel financing program. The Federal Maritime Commission (FMC) is authorized at $11.650,000. Finally, it includes ocean incineration vessels within the U.S.-built, U.S.-manned requirements of the Jones Act, provided that existing operations are grandfathered.

BACKGROUND AND NEEDS

The Merchant Marine Act, 1936, declares the policy of the United States, in the interest of national defense and commercial health, to "foster the development and encourage the maintenance" of a vigorous merchant fleet. The act authorizes certain programs to promote the U.S.-flag merchant marine and private shipbuilding in the United States.

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Familiar statistics portray a declining shipbuilding industry and a noncompetitive merchant fleet. The costs of building and operating U.S.-flag ships vastly exceed the costs incurred by most foreign competitors. The shipyards are building fewer vessels and the existing fleet is carrying a smaller percentage of our total foreign commerce than a decade or two ago. This unfortunate situation has occurred despite our maritime promotional programs and thus raises serious doubts about their effectiveness.

Over the past year, this Committee has become increasingly concerned that our maritime subsidy programs may not work at a cost the taxpayer can bear. More alarming, these programs seem to have provided no incentive to arrest the declining competitive stance of several aspects of our maritime community. In fact, some signs indicate they may promote inefficiency and maintain uncompetitiveness. The Committee has by no means concluded that the subsidy programs must be scrapped, but it has been earnestly exploring alternative methods of promoting the goals of the Merchant Marine Act in hope that a more effective approach can be devised. Whether this new approach should result from substantial modification of existing programs or from bold new programs is not at all clear.

In February 1981, several members of this Committee sent a letter to the President encouraging a fundamental review of our national maritime policy and posing 29 far-reaching questions designed to provide a framework for that review. By midyear, maritime authorization provisions were enacted that began to put the budgetary brakes on existing programs, the Maritime Administration was transferred to a more commodious home at the Department of Transportation (DOT), and the President's newly designated maritime policy spokesman, Secretary Lewis, issued an enthusiastic commitment to formulate a new policy aimed at infusing vigor into this sagging industry. About the same time, members of this Committee and the House Merchant Marine and Fisheries Committee introduced and began intensive consideration of maritime regulatory reform bills governing the U.S. ocean liner trades. These bills have, just recently, received approval of their parent committees and appear likely to realize enactment this session.

These recent events have been encouraging, but in the promotional area most of the work for the administration, for this Committee, and for the House seems to lie ahead. Ad Hoc alterations to existing programs are not likely to be dramatically successful. Some potential alternatives, such as reservation of certain percentages of private U.S. import and export cargoes to U.S. vessel carriage may even present greater problems than existing programs. It is clear that, whatever solutions we consider, we should take stock and review our objectives, determine what we need by way of a naval auxiliary or a shipbuilding mobilization base, and make our ultimate decisions only after we have redefined or reaffirmed those objectives. That review may instill the degree of commitment necessary to develop a concensus on the programs or modifications we adopt.

The Committee hopes that the administration will soon announce a constructive, comprehensive promotional policy. It must be noted, however, the problems of the maritime industry are not necessarily problems of Federal maritime programs. Many are inextricably tied to the slumping economic position the U.S. finds itself in today and

some are unique to the maritime industry itself. For the collective efforts at fashioning revised policies to work successfully, it will be necessary for every facet of the maritime industry to adjust, innovate, and, in some cases, even sacrifice.

In the meantime, like most other Federal programs, those aimed at the maritime industry are again under the pressures of budgetary restraint this year. The funding levels sought by the administration and authorized by this bill essentially represent a decision to place these programs on hold pending completion of the administration's maritime policy review.

Operating Differential Subsidy (ODS) funding is increased about 10 percent over last year's level. This is sufficient to cover escalating costs of meeting obligations of ODS contracts already in force, but does not permit MarAd to enter additional new contracts.

Research and Development funding exceeds last year's levels by about $6 million, most of which result from an accounting shift of an ice-breaking program from the Coast Guard budget to the MarAd budget. Operations and training programs will be held at the same overall level as last year, resulting in slight reductions in money available to the U.S. Merchant Marine Academy and six State maritime academies.

Like last year, no funds are authorized for Construction Differential Subsidies (CDS). Shipyards may benefit substantially, however, from the enormous amounts proposed in the President's budget for Navy construction. The Navy budget also may provide the best source of funds for trade-ins of older merchant vessels to the Ready Reserve Fleet.

In the absence of CDS funds, this bill extends for 2 years the authority of U.S.-flag subsidized vessel operators to engage foreign shipyards to construct, reconstruct, or repair their vessels. Even with CDS covering 50 percent of construction in past years, vessel operators have not achieved parity with foreign operators who pay 35–45 percent of the construction cost in a U.S. shipyard. Without CDS, the need to relieve U.S. operators of the competitive dilemma placed on them by a U.S.-built requirement becomes even more compelling.

Parity in capital costs is essential if U.S.-flag operators are to compete with foreign-flag vessels that are not restricted in the places they may construct. If CDS funds are unavailable and subsidized carriers cannot build abroad, they will not be able to build or convert at all and the U.S. liner fleet, already perilously small, will decline further. Thus, the question really is whether our liner operators will be able to build at all, not whether they should be required to build here or permitted to build abroad. U.S. liner operators receiving ODS are obligated to contract for new construction to replace up to 58 vessels between now and the end of fiscal year 1987. Though these vessels may not be replaced on a one for one basis, because newer ships will be more efficient, the funds required will be enormous. The Committee believes that permitting some foreign acquisition, construction, or reconstruction should ensure the survival of the liner fleet without any major impact to the shipyards. In fact, the Committee expects to consider whether in our maritime programs, generally, the connections between the fate of our fleet and our shipyards should be severed altogether.

The bill also permits the use of money accumulated in a Capital Construction Fund (CCF) to be used in the foreign acquisition, construction, and reconstruction of vessels for the same 2-year period. Earnings that an operator deposits in a CCF, under current law, are not taxed so long as withdrawn for construction in a U.S. shipyard; withdrawals for any non-qualified use, such as foreign construction, are taxed with a penalty. The advantage is a tax deferral because any qualified withdrawal results in a corresponding reduction in the basis of the asset for depreciation purposes.

If the authority to build foreign as a means of upgrading and expanding the fleet is to be meaningful, U.S.-flag operators must be able to maintain the tax parity they now enjoy when dedicating profits to vessel construction in the United States. This fact of competitive cost compels extension of the tax advantage to foreign construction and reconstruction. The tax advantage is necessary to induce investment by U.S. citizens and companies in U.S. shipping as opposed to other industries, whether the construction is domestic or foreign. Further, U.S. operators currently have most of their cash tied up in CCF accounts with the obligation to build in the United States, but without the ability to do so; since withdrawal for foreign construction incurs a huge tax penalty, the money will either languish in the CCF (because U.S. construction is prohibitive) or will be vastly eroded when withdrawn (allowing less than the total potential construction).

Though the CCF tax advantage was designed to promote both the U.S. fleet and U.S. shipyards, it cannot fairly be argued that this extension will hurt U.S. shipyards, because those who operate in the foreign trade cannot be expected to undertake construction in the United States in the near future whether or not the tax advantage is extended. That is, the extension would not decrease U.S. construction.

The bill makes several adjustments to the Federal ship financing program designed to control the growth of loan guarantee commitments and to provide the Secretary greater flexibility in its administration. Pursuant to this program, provided by Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1271, et. seq.), the Secretary of Transportation is authorized to guarantee the payment of principal and interest on loans made to finance the construction, reconstruction, and reconditioning of U.S.-flag vessels. This Government guarantee on a major portion of the purchase price gives vessel owners the ability to raise long term money at reasonable rates. It also makes private financing available to operators who might not otherwise qualify in the capital markets. At no cost to the Federal Government, this program has effectively promoted the construction of over 2,500 vessels to date.

Since its inception in 1938, the Title XI Guarantee Program has been amended on a number of occasions. It was completely rewritten in the 92nd Congress, but since then most amendments have been to increase the statutory authority of this successful program.

Though the Committee believes it is necessary to reign in this credit program, bring it on-budget, and control its growth, it firmly believes that this exercise of budget control is properly the role of Congress. This is consistent with the conclusions of the Budget Committee Task Force on Federal Credit. This bill makes it very clear that if annual

limits are to be set on new Title XI loan guarantees at all, they are to be set only in annual authorization acts of Congress.

The administration has asked Congress to limit new commitments to guarantee loans for merchant vessel construction under Title XI of the Merchant Marine Act, 1936, to $600 million in fiscal year 1983. This bill includes a limit on the growth of new commitments, but schedules it over a 3-year period. Not more than $2.25 billion in new commitments may be extended in fiscal years 1983, 1984, and 1985; this averages to $750 million per year, though the bill permits up to $850 million in any one year. It also permits authority not used in one year to roll over into the next, or, vice-versa. This allows for flexibility in rationing its use responsive to market demands. Thus the average amount, $750 million, represents a 25 percent increase over the Administration recommendation; since $850 million could be used in 1983, it potentially represents a 42 percent increase over the Administration recommendation in the 1983 fiscal year (though excess use in any one year reduces the amount available in the other two years).

The Title XI program is now limited by a $12 billion ceiling on aggregate outstanding loan guarantee commitments, of which $9.5 billion may be for merchant vessel construction. At the end of fiscal year 1982, roughly $8.2 billion in loan guarantees will have been committed for merchant vessel construction, leaving about $1.3 billion in authority still available for that purpose. This existing authority, supplemented by paybacks (representing amortization of debt and decommitments of existing guaranteed loans) in each of the next 3 fiscal years is expected to provide the $2.25 billion in new guarantee authority contemplated by this bill. Consequently, the Committee has not increased the $12 billion aggregate ceiling on the Title XI program.

The bill also makes certain technical improvements to the Title XI guarantee program designed to provide the Secretary additional flexibility in the event of an obligor's default on a guaranteed loan. In addition, it restores Secretarial discretion to foreclose on a defaulted loan that was inadvertantly omitted in the 1978 recodification of bankruptcy law (the Bankruptcy Reform Act of 1978 (11 U.S.C. 101 et seq.).

The bill subjects the FMC to annual authorization and authorizes funds for its operation at the level requested by the Commission.

Finally, it includes an extension of the Jones Act.

LEGISLATIVE HISTORY

Senators Gorton, Packwood, Stevens, and Kasten introduced S. 2336 on April 1, 1982. The Merchant Marine Subcommittee held a hearing on S. 2336, April 20, 1982, at which representatives of the Maritime Administration, the Federal Maritime Commission, the Council of American-Flag Ship Operators, Delta Steamship Company, the Shipbuilder's Council of America, the Committee for Title XI Vessel Financing, and the Seafarers International Union testified. Other interested parties submitted statements for the record. Subsequently, a Staff Working Draft, incorporating several amendments, was circulated to the Committee Members. S. 2336 was unanimously approved and ordered to be reported by the Committee, with those amendments, on May 11, 1982.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared By the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., May 13, 1982.

Hon. BOB PACKWOOD,
Chairman, Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has prepared the attached revised cost estimate for S. 2336, a bill to authorize appropriations for fiscal year 1983 for certain maritime programs of the Department of Transportation, and for other purposes.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

ALICE M. RIVLIN, *Director.*

CONGRESSIONAL BUDGET OFFICE—REVISED COST ESTIMATE

1. Bill number: S. 2336.

2. Bill title: A bill to authorize appropriations for fiscal year 1983 for certain maritime programs of the Department of Transportation, and for other purposes.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science and Transportation, May 11, 1982.

4. Bill purpose: The bill authorizes the appropriation of $16.8 million for fiscal year 1983 for research and development and $71 million for operations and training activities of the Department of Transportation's Maritime Administration (MARAD) and an appropriation of $454 million for fiscal year 1983 for liquidation of contract authority for operating-differential subsidies.

The bill allows vessels over five thousand deadweight tons built outside the United States until September 30, 1984 to be considered as United States built for determining eligibility for operating-differential subsidies and for purposes of port and tanker safety regulations. S. 2336 directs that the total amount of new loan guarantee commitments shall not be greater than $2.25 billion for the fiscal years 1983 through 1985 and that no more than $850 million may be committed in any one year. (Guarantee commitments by the end of 1982 are expected to total about $8.2 billion, out of the $9.5 billion permitted under the 1981 Reconciliation Act. The Administration has proposed a 1983 ceiling of $600 million on new loan guarantees.)

In addition, the bill amends title XI, the ship loan guarantee program, to more clearly spell out the responsibilities of the Secretary of Transportation in the case of default under a loan guarantee mortgage. Finally, the bill states that the Federal Maritime Commission (FMC) shall be subject to annual authorizations and authorizes appropriations of $11.65 million for fiscal year 1983 for FMC activities.

The 1983 authorization levels in the bill for MARAD programs are those requested by the President and are approximately 5 percent above the funding levels enacted to date for fiscal year 1982 for these programs.

The FMC authorization level is approximately 4 percent above the 1982 level, and approximately 12 percent above the President's request of $10.4 million.

5. Cost estimate:

	Millions
Authorization level:	
Fiscal year:	
1983	$99.5
1984	-----
1985	-----
1986	-----
1987	-----
Estimated outlays:	
Fiscal year:	
1983	78.1
1984	18.5
1985	2.9
1986	-----
1987	-----

Including outlays from prior years' appropriations, total outlays for these programs will be $101.5 million in 1983, assuming the funding levels authorized in this bill.

The costs of this bill fall within budget function 400.

6. Basis of estimate: All funds authorized are assumed to be appropriated. Outlays for the FMC, and the research and development and operations and training activities of MARAD were estimated using the recent historical disbursement rates of these programs.

In addition, the bill authorizes an appropriation off $454 million for fiscal year 1983 for liquidation of contract authority on obligations incurred for operating-differential subsidies. These amounts are not included as part of the authorization level or estimated outlays in the above cost estimate section, because the spending for this purpose is the result of previously provided contract authority.

7. Estimate comparison: The Administration has estimated the total 1983 outlays for these programs will be $98 million, assuming the President's requested authorization levels.

8. Previous CBO estimate: On May 11, 1982, the Congressional Budget Office prepared a cost estimate for H.R. 5723, a similar bill ordered reported by the House Committee on Merchant Marine and Fisheries on May 5, 1982. That bill authorized $100 million for construction differential subsidies, $16.8 million for research and development, $81 million for operations and training, and $25 million for the acquisition of vessels for the National Defense Reserve Fleet.

On May 12, 1982, the Congressional Budget Office prepared a cost estimate for S. 2336 that incorrectly stated the total amount of loan guarantee commitments at the end of fiscal year 1982 at $7 billion.

9. Estimate prepared by: Patrick J. McCann.

10. Estimate approved by:

JAMES L. BLUM,
Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of this legislation:

S. 2336 authorizes ongoing maritime programs only and does not increase the scope of involvement in these programs by either the Secretary of Transportation or the Federal Maritime Commission. In several respects, the bill may modestly decrease regulation.

Under the temporary authority to build-foreign enacted last year, the Secretary was required to certify the inadequacy of Construction Differential Subsidies (CDS) before permission could be granted to build-foreign. Consequently, an operator had to meet the burden of filing a full CDS application, knowing full well no money was available, simply to conform to the statutory mandate so as not to compromise his eligibility for Operating Differential Subsidies (ODS). Likewise, an operator wishing to bring a foreign vessel under the U.S.-flag and carry preference cargo had to file a CDS application anticipating rejection. The Committee does not believe that any Secretarial decision is necessary to permit foreign construction, reconstruction, and acquisition, so no affirmative Secretarial action is required to trigger the authority. This saves substantial paperwork for the operators and obviates the need for MarAd to review hopeless CDS applications.

Second, to the extent fewer Title XI loan guarantees may be committed, the Committee expects less activity at MarAd's vessel financing office. More important, however, is that the bill enhances the Secretary's ability to foreclose on the government's first preferred ship mortgage in the case of default on a Title XI loan guarantee, and to market the vessel with its financing intact.

Section-by-Section Analysis

SECTION 1

This section authorizes appropriations for the following maritime programs.

1. Operating-differential subsidies

The bill authorizes $454,010,000 for operating-differential subsidies. Operating differential subsidies (ODS) represent the excess cost of operating a U.S.-flag vessel over the cost of operating the vessel if it were registered in a foreign country. Subsidy is provided for wage, maintenance, repair, and insurance costs. These sums are paid to promote the maintenance of a U.S.-flag merchant fleet that is capable of providing essential shipping services in the foreign commerce of the United States. Operators receiving ODS must operate American-built vessels manned by American crews.

Estimated payments in subsidy during fiscal year 1983 include $316,701,000 for 128 liner vessels, $50,070,000 for 23 bulk carrier vessels, and $87,239,000 for the balance of subsidy estimated as due for ship operations through 1982.

These funds will support the following vessel operations:

	Vessels
Liner vessels:	
American President Lines, Ltd	22
Delta Steamship Lines, Inc	24
Farrell Lines, Inc	12
Lykes Bros. Steamship Co., Inc	39
Moore-McCormack Lines, Inc	13
Prudential Lines, Inc	3
United States Lines, Inc	4
Waterman Steamship Corp	11
Total	128
Bulk vessels:	
Aeron Marine Shipping Co	2
American Shipping, Inc	1
Aquarius Marine Co	1
Aries Marine Shipping Co	2
Atlas Marine Co	1
Chestnut Shipping Co	2
Equity Carriers, Inc	3
Margate Shipping Co	3
Moore-McCormack Bulk Transport, Inc	3
Pacific Shipping, Inc	1
Seabulk Trans-marine, Inc	3
Worth Oil Transport Co	1
Total	23

2. Research and Development

The bill authorizes $16,800,000 for research and development. The major objective of the research and development program is to develop methods, equipment, and systems to make the U.S. shipbuilding and ship operating industries more efficient, competitive, and productive.

The MarAd research program concentrates on those projects that the industry is not in a position to undertake on its own. What they have not been able to do individually, however, they have been able to do in a MarAd focused program which works on problems common to many, and distributes the solutions to the various sectors of this industry that can benefit from them. This cooperation carries with it the benefits of doing the work once and then sharing it among many companies. The Committee continues to encourage strong emphasis on industry participation in fiscal year 1983. Cost sharing and participation by industry in research and development projects assure that projects have practical objectives, increase potential for industry implementation, and enhance the research effort by obtaining a larger return for the Federal investment.

In 1983, the research and development program will be conducted in five major program areas as follows:

1. Advanced ship development.—This program involves projects to achieve greater productivity in the building of ships and projects directed toward the development of new and improved ship machinery.

2. Advanced ship operations.—This program aims at improving the efficiency, competitiveness, and safety of U.S.-flag ship operations through the development of advanced management operating tech-

niques using computerized systems, improving fleet control by means of advanced navigation/communication systems, improving cargo handling methods and equipment, improving port productivity and intermodal cargo movement, and assisting with port planning activities.

3. Research facilities.—This program provides for research facilities operations, an investigation and simulation of new problems related to ship operations, safety, and design.

4. Advanced maritime technology.—This program investigates advanced technological concepts and requirements, and formulates and conducts specific systems analysis and systems development projects.

5. Arctic shipping.—This program supports navigation research in the U.S. Arctic in coordination with the U.S. Coast Guard. The 1983 estimate includes funds for operation of a Coast Guard icebreaking vessel.

3. Operations and training

The bill authorizes $71,013,000 for operations and training activities authorized by the Merchant Marine Act, 1936.

A. Reserve fleet expenses—$6,516,000

The reserve fleet program provides for preservation, maintenance and security of ships in the National Defense Reserve Fleet and for administration of the ship transfer and ship disposal programs. The National Defense Reserve Fleet provides an inventory of ships available to meet requirements for additional shipping capacity in times of national emergency. The Ready Reserve program maintains selected National Defense Reserve Fleet ships in an advanced state of readiness and will be conducted on a reimbursable basis with the Navy as was the case in 1982.

B. Maritime education and training expenses—$29,607,000

a. Merchant Marine Academy.—This activity provides for operating the Merchant Marine Academy at Kings Point, N.Y. The objective of the Academy is to instruct and prepare selected personnel for service as officers in the merchant marine. Approximately 261 officers will graduate in 1983.

b. State marine schools.—Assistance is provided to States in the operation and maintenance of maritime academies or colleges for the training of merchant marine officers. This assistance involves direct payments to the State schools, student incentive payments to cadets, and maintenance of vessels provided for use as training ships. An estimated 735 officers will graduate from these schools in 1983.

c. Additional training.—This activity provides for costs of administration of the Merchant Marine Academy and State marine school programs at the bureau level, and for the conduct of supplementary training courses required for licensed and unlicensed merchant marine personnel.

C. Other operations and training expenses—$34,890,000

Funding authorized under the category of "other operating expenses" provides for the direction and administration of MarAd programs other than the Merchant Marine Academy, additional training and reserve fleet programs, and program costs not separately authorized. This authorization includes funding for increased operating costs, and for establishment and implementation of a program for monitoring and controlling asbestos hazards within the maritime programs.

SECTION 2

This section extends for a 2-year period temporary authority enacted in section 1610 of the Omnibus Budget Reconciliation Act of 1981 permitting U.S.-flag vessel operators receiving or applying for Operating Differential Subsidies to construct or reconstruct vessels outside the United States. This waives the current requirement that only U.S.-built vessels may receive subsidies to operate in the foreign trades under U.S.-flag. This amendment also permits existing vessels acquired outside the United States to be reflagged in the United States and made eligible to receive operating subsidies.

The Committee does not intend this amendment to create pressure for extensive additional ODS funding; though all existing ODS contracts are fully funded, no additional new contracts will be extended in the coming year. Nevertheless, for those operators who are reconstructing vessels under existing contracts or meeting contractual obligations to replace vessels, this authority is essential.

The amendment also permits the use of Capital Construction Funds in conjunction with this temporary authority. So that all U.S.-flag operators in a similar position are placed on par, U.S. vessels built overseas under this section, or under the authority of last year's temporary authority, or otherwise, may be considered U.S. built for the purposes of the CCF provisions. Thus, such vessels will be considered "qualified" for withdrawals from a CCF, as well as "eligible" for deposits into a CCF. They will also be considered U.S. built for the purposes of carrying preference cargo, without a 3-year delay, and of making conversions required by the Port and Tanker Safety Act.

SECTION 3

This section provides that annual limitations no new commitments of Title XI vessel construction loan guarantees may be set, if at all, only in annual authorization acts. This precludes OMB from setting annual limitations administratively.

SECTION 4

This section sets a limit of $2.25 billion on new Title XI commitments to guarantee loans for merchant vessel construction during fiscal years 1983, 1984, and 1985, provided that not more than $850 million may be committed in any one of these years. The average amount available in each year, $750 million, considerably increases the $600 million limit OMB has recommended.

SECTION 5

When a shipowner borrows funds for the construction of a new vessel by selling bonds to the general public, the Secretary of Transportation can issue a Title XI guarantee that the bonds will be paid and take a mortgage on the new vessel. The security of the bondholder obligees is the Title XI guarantee that if the shipowner obligor does not pay them, the U.S. Government will. The security of the Secretary of Transportation for the Title XI Guarantee is a mortgage on the new vessel.

Under existing law, in the event of an unsecured default, the Secretary must pay off the bondholders in order to foreclose on the ship mortgage. Thereafter, it is usually necessary for the Secretary to bid for the vessel at the Admiralty foreclosure sale, take title to the vessel, and attempt to sell it to another U.S. operator. Any such vessel purchaser would have to arrange for new Title XI financing.

This section gives the Secretary of Transportation two options in the event of an uncured default. The first option would be the course of action provided by existing law which would not be amended. The second option, added by this amendment, would authorize the Secretary to assume the periodic payments of the shipowner obligor to the bondholder obligees, and foreclose on the ship mortgage. At the Admiralty foreclosure sale another U.S. operator could bid for and take title to the vessel with Title XI financing already in place. That vessel purchaser would assume the bond payments from the Secretary of Transportation.

These proposed amendments to the Title XI Guarantee program would offer the following advantages:

a. The procedure provided by existing law would be retained.

b. The bondholdlers need not be disturbed by the sale of a vessel.

c. The Title XI Fund need not be called upon to pay off the bondholders in the event of a shipowner's default.

d. The Secretary need not go through the formality of purchasing the vessel prior to its sale to another U.S. operator.

e. The vessel purchaser need not be required to arrange for new Title XI financing, but could assume the responsibility for bond payments from the Secretary at the foreclosure sale.

SECTION 6

Prior to the enactment of the Bankruptcy Reform Act of 1978, where there was an unsecured Title XI default by a shipowner in bankruptcy, the Bankruptcy Court was prohibited by a specific provision of law from enjoining the Secretary from foreclosing on the vessel mortgage of a debtor shipowner if he determined that such a foreclosure was in the best interest of the Government.

The Bankruptcy Reform Act of 1978 did not retain the Secretary's immunity from any injunction or automatic stay provision of the bankruptcy code. As a result, the Secretary of Transportation, as a Title XI mortgagee, is subject to the automatic stay provisions of the bankruptcy code and prohibited from taking unilateral foreclosure action on a Title XI mortgage.

The Bankruptcy Reform Act excepted the Secretary of Housing and Urban Development from the automatic stay provisions of the bankruptcy code and prohibited from taking unilateral foreclosure fits of the housing program. For the same reason, this section would similarly except the Secretary of Transportation in administering the Title XI Guarantee Program.

SECTION 7

This section subjects the FMC to annual authorization for the first time.

SECTION 8

This section authorizes funding of the FMC at the level requested by the Commission.

SECTION 9

This section extends section 27 of the Merchant Marine Act of 1920, the Jones Act, to an offshore marine activity not currently subject to Jones Act requirements. In recent years, in response to the increasing need to dispose of hazardous and toxic wastes in an environmentally sound manner, new technology has been developed to dispose of such wastes through incineration on specially equipped vessels at sea. Presently, a single such vessel operates periodically off the U.S. coast. The ship is owned by a U.S. company, but was built, flagged, and crewed foreign. Since this vessel, as well as a newer ship to be ready for operation later this year, does not carry cargo from point-to-point in the coastwise trade of the U.S., they do not fall under the American construction, flagging, and crewing requirements of the Jones Act.

An American company plans to operate new hazardous waste incineration vessels along the cost of the U.S. in compliance with Jones Act requirements for American construction, flagging, and crewing. This company seeks extension of the Jones Act to the incineration of waste at sea, while the company currently operating vessels for this purpose points out that such extension of the Jones Act would render their vessels unqualified to continue operating.

In order to provide an environment suitable to the growth of a U.S. incinerator vessel construction and operation program, the Committee has decided to extend the Jones Act to include that activity. At the same time, the Committee believes it inequitable suddenly and unexpectedly to render present American investment in this technology worthless, and thus allows those vessels owned by or under construction for a citizen of the United States on May 1, 1982, to remain in operation.

ROLLCALL VOTES IN COMMITTEE

In accordance with paragraph 7(c) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following record votes during its consideration of S. 2336:

The motion by Senator Gorton to favorably report the bill, as amended, passed by a vote of 17 yeas and no nays, as follows:

YEAS—	NAYS—
Mr. Packwood	
Mr. Goldwater [1]	
Mr. Schmitt	
Mr. Danforth	
Mrs. Kassebaum [1]	
Mr. Pressler	
Mr. Gorton	
Mr. Stevens	
Mr. Kasten	
Mr. Cannon	
Mr. Long	
Mr. Hollings [1]	
Mr. Inouye	
Mr. Ford	
Mr. Riegle [1]	
Mr. Exon	
Mr. Heflin	

[1] Proxy.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

MERCHANT MARINE ACT, 1936

SECTION 615 OF THAT ACT

[SEC. 615. (a) The Secretary of Transportation may, until September 30, 1983, authorize an operator receiving or applying for operating differential subsidy under this title to construct, reconstruct, or acquire its vessels of over five thousand deadweight tons in a foreign shipyard if the Secretary finds and certifies in writing that such operator's application for construction differential subsidy cannot be approved due to the unavailability of funds in the construction differential subsidy account. Vessels constructed, reconstructed, or modified pursuant to this section shall be deemed to have been United States built for the purposes of this title, section 901(b) of this Act, and section 5(7) of the Port and Tanker Safety Act of 1978 (46 U.S.C. 391(a)(7)): *Provided*, That the provisions of section 607 of this Act shall not apply to vessels constructed, reconstructed, modified, or acquired pursuant to this section.

[(b) The provisions of this section shall be effective for fiscal year 1983 only if the President in his annual budget message for that year requests at least $100,000,000 in construction differential subsidy or proposes an alternate program that would create equivalent merchant shipbuilding activity in privately owned United States shipyards and the Secretary reports to Congress on effect such action will have on the shipyard mobilization base at least thirty days prior to making the certification referred to in subsection (a).]

SEC. 615. Notwithstanding any other provision of this Act, prior to October 1, 1984, an operator receiving or applying for operating differential subsidy under this title may construct, reconstruct, or acquire its vessels of over five thousand deadweight tons outside the United States. Any vessel constructed, reconstructed, or acquired in accordance with this section or section 1610 of P.L. 97-35 and any vessel otherwise constructed, reconstructed, or acquired outside of the United States and documented under the laws of the United States prior to October 1, 1984, shall be deemed to have been United States built for the purposes of this title, section 901(b) of this Act, and section 5(7) of the Port and Tanker Safety Act of 1978 (46 U.S.C. 391a(7)).

SECTION 1103 OF THAT ACT

SEC. 1103. (a)—(e) * * *

(f) The aggregate unpaid principal amount of the obligations guaranteed under this section and outstanding at any one time shall not exceed $12,000,000,000 of which $1,650,000,000 shall be limited to obligations pertaining to commercial demonstration ocean thermal energy conversion facilities or plantships guaranteed under section

1110 of this title, and of which $850,000,000 shall be limited to obligations pertaining to guarantees of obligations for fishing vessels and fishery facilities made under this title. *No additional limitations may be imposed on new commitments to guarantee loans for any fiscal year, except in such amounts as established in advance in annual authorization acts.*

SECTION 1104 OF THAT ACT

SEC. 104. (a) Pursuant to the authority granted under section 1103(a), (a), the Secretary of Transportation upon such terms as he shall prescribe, may guarantee or make a commitment to guarantee, payment of the principal of and interest on an obligation which aids in—

(1) * * *

(2) * * *

(3) financing the purchase of vessels theretofore acquired by the Fund *or for which related obligations were accelerated and paid by the secretary* under the provisions of section 1105 and reconditioning and reconstructing such vessels;

(4)—(7) * * *

(b)—(g) * * *

(h) Obligations guaranteed under this title and agreements relating thereto shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration, *assumption*, and subrogation provisions and the issuance of notes by the obligor to the Secretary of Transportation), liens and releases of liens, payments of taxes, and such other matters as the Secretary of Transportation may, in his discretion, prescribe.

SECTION 1105 OF THAT ACT

SEC. 1105. (a) In the event of a default, which has continued for thirty days, in any payment by the obligor of principal or interest due under an obligation guaranteed under this title, the obligee or his agent shall have the right to demand (*unless the Secretary shall, upon such terms as may in his discretion be provided in the obligations or agreements relating thereto, prior to such demand in his discretion, have assumed the obligor's rights and duties under said obligations and agreements and shall have made any payments in default*), at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than ninety days from the date of such default, payment by the Secretary of Transportation of the unpaid principal amount of said obligation and of the unpaid interest thereon to the date of payment. Within such period as may be specified in the guarantee or related agreements, but not later than thirty days from the date of such demand, the Secretary of Transportation shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment: *Provided*, That the Secretary of Transportation shall not be required to make such payment if prior to the expiration of said period he shall find that there was no default by the obligor in the payment of principal or interest or that such default has been remedied prior to any such demand.

[(b) In the event of a default under a mortgage, loan agreement, or other security agreement between the obligor and the Secretary of Transportation, the Secretary of Transportation may notify the obligee or his agent shall have the right to demand at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than sixty days from the date of such notice, payment by the Secretary of Transportation of the unpaid principal amount of said obligation and of the unpaid interest thereon. Within such period as may be specified in the guarantee or related agreements, but not later than thirty days from the date of such demand, the Secretary of Transportation shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment.]

(b) In the event of a default under a mortgage, loan agreement, or other security agreement between the obligor and the Secretary, the Secretary may (upon such terms as may in his discretion be provided in the obligations or agreements relating thereto), at his option and discretion—

(1) notify the obligee or his agent of such default and the assumption by the Secretary of the obligor's rights and duties under said obligation and agreements relating thereto and make any payment in default; or

(2) notify the obligee or his agent of such default and the obligee or his agent shall have the right to demand at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 60 days from the date of such notice, payment by the Secretary of the unpaid principal amount of said obligation and the unpaid interest thereon. Within such period as may be specified in the guarantee or related agreements, but not later than 30 days from the date of such demand, the Secretary shall promptly pay to the obligee or his agent the unpaid principal amount of said obligation and unpaid interest thereon to the date of payment. The validity of the guarantee of any obligation made by the Secretary under this title shall be unaffected and such guarantee shall remain in full force and effect notwithstanding any assumption of such obligation by the Secretary pursuant to subsections (a) and (b) of this section.".

(c) In the event of any payment *or assumption* by the Secretary Transportation, *in his discretion*, under subsection (a) or (b) of this section, the Secretary of Transportation shall have all rights in any security held by him relating to his guarantee of such obligations as are conferred upon him under any security agreement with the obligor. Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the United States, the Secretary of Transportation shall have the right, in his discretion, to complete, recondition, reconstruct, renovate, repair, maintain, operate, charter, or sell any property acquired by him pursuant to a security agreement with the obligor or may place a vessel in the national defense reserve. The terms of the sale shall be as approved by the Secretary of Transportation.

(d) * * *

(e) * * *

MERCHANT MARINE ACT, 1920

SECTION 27 OF THAT ACT

SEC. 27. That no merchandise shall be transported by water, or by land and water, on penalty of forfeiture thereof, between points in the United States, including Districts, Territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any other vessel than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade is extended by sections 18 or 22 of this Act: *Provided*, That no vessel having at any time acquired the lawful right to engage in the coastwise trade, either by virtue of having been built in, or documented under the laws of the United States, and later sold foreign in whole or in part, or placed under foreign registry, shall hereafter acquire the right to engage in the coastwise trade: *Provided further*, That no vessel of more than five hundred gross tons which has acquired the lawful right to engage in the coastwise trade, by virtue of having been built in or documented under the laws of the United States, and which has later been rebuilt, shall have the right thereafter to engage in the coastwise trade, unless the entire rebuilding, including the construction of any major components of the hull or superstructure of the vessel, is effected within the United States, its Territories (not including trust territories), or its possessions: *Provided further*, That this section shall not apply to merchandise transported between points within the continental United States, including Alaska, over through routes heretofore or hereafter recognized by the Interstate Commerce Commission for which routes rate tariffs have been or shall hereafter be filed with said Commission when such routes are in part over Canadian rail lines and their own or other connecting water facilities: *Provided further*, That this section shall not become effective upon the Yukon River until the Alaska Railroad shall be completed and the Shipping Board shall find that proper facilities will be furnished for transportation by persons citizens of the United States for properly handling the traffic: *Provided further*, That this section shall not apply to the transportation of merchandise loaded on railroad cars or to motor vehicles with or without trailers, and with their passengers or contents when accompanied by the operator thereof, when such railroad cars or motor vehicles are transported in any railroad car ferry operated between fixed termini on the Great Lakes as a part of a rail route, if such car ferry is owned by a common carrier by water and operated as part of a rail route with the approval of the Interstate Commerce Commission, and if the stock of such common carrier by water, or its predecessor, was owned or controlled by a common carrier by rail prior to June 5, 1920, and if the stock of the common carrier owning such car ferry is, with the approval of the Interstate Commerce Commission, now owned or controlled by any common carrier by rail and if such car ferry is built in and documented under the laws of the United States: *Provided further*, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained

and furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privileges to vessels of the United States, this section shall not apply to the transportation by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, of (a) empty cargo vans, empty lift vans, and empty shipping tanks, (b) equipment for use with cargo vans, lift vans, or shipping tanks, (c) empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges, and (d) any empty instrument for international traffic exempted from application of the customs laws by the Secretary of the Treasury pursuant to the provisions of section 322 (a), Tariff Act of 1930 (19 U.S.C. 1322(a)), if the articles described in clauses (a) through (d) are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and (e) stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade: *Provided further*, That upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon his finding, pursuant to information furnished by the Secretary of State, that the government of the nation of registry extends reciprocal privilege to vessels of the United States, the Secretary of the Treasury may suspend the application of this section to the transportation of merchandise between points in the United States (excluding transportation between the continental United States and noncontiguous states, districts, territories, and possessions embraced within the coastwise laws) which, while moving in the foreign trade of the United States, is transferred from a non-self-propelled barge certified by the owner or operator to be specifically designed for carriage aboard a vessel and regularly carried aboard a vessel in foreign trade to another such barge owned or leased by the same owner or operator, without regard to whether any such barge is under foreign registry or qualified to engage in the coastwise trade: *Provided further*, That until April 1, 1984, and notwithstanding any other provisions of this section, any vessel documented under the laws of the United States and owned by persons who are citizens of the United States may, when operated upon a voyage in foreign trade, transport merchandise in cargo vans, lift vans, and shipping-tanks between points embraced within the coastwise laws for transfer to or when transferred from another vessel or vessels, so documented and owned, of the same operator when the merchandise movement has either a foreign origin or a foreign destination; but this proviso (1) shall apply only to vessels which that same operator owned, chartered or contracted for the construction of prior to the date of the enactment of this proviso, and (2) shall not apply to movements between points in the contiguous United States and points in Hawaii, Alaska, the Commonwealth of Puerto Rico and United States territories and possessions. *For the purposes of this section, after December 31, 1983, or until such time as an incineration vessel has been constructed in the United States and documented as a vessel of the United States, whichever occurs later, the transportation of hazardous waste, as defined in section 1004(5) of*

the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6903 (5)), from a point in the United States for the purpose of the incineration at sea of that waste shall be deemed to be transportation by water of merchandise between points in the United States: Provided, however, That the provisions of this sentence shall not apply to such transportation when performed by an ocean incineration vessel, or a replacement to such vessel in case of maritime casualty, owned by or under construction for a citizen of the United States on May 1, 1982. Such vessels shall meet all current Coast Guard and EPA standards with respect to ocean incineration. The term 'citizen of the United States' means a corporation wholly owned by such a citizen as defined in sec. 2(a) and 2(b) of the Shipping Act, 1916 (46 U.S.C. 802 (a) and (b)).

TITLE XI, UNITED STATES CODE

SECTION 362 OF THAT TITLE

§ 362. Automatic Stay

(a) * * *

(b) The filing of a petition under section 301, 302. or 303 of this title does not operate as a stay—

(1)—(6) * * *

[(7) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by said Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units; or]

(7) under subsection (a) of this section, of the commencement of of any action by—

"(A) the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units; or

"(B) the Secretary of Transportation to foreclose a mortgage on a vessel or vessels pursuant to the Ship Mortgage Act, 1920, as amended, held by said Secretary under the provisions of sections 1101–1110 or section 207 of the Merchant Marine Act, 1936, as amended; or

(8) * * *

(c)—(g) * * *

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